

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

VINCENT AND DIANN MILLER,)	Case No. 1:18CV01465
)	
Plaintiff,)	JUDGE DONALD C. NUGENT
)	
v.)	
)	
USAA FEDERAL SAVINGS BANK,)	MEMORANDUM OPINION
)	
Defendants,)	

This matter is before the court on the parties' Cross Motions for Summary Judgment.

Defendant filed a Motion to Strike Plaintiff's Reply in Support of their Motion for Summary Judgment. The dispositive motion schedule established by the Court set a deadline to file reply briefs in support of summary judgment to be July 1, 2019. (ECF #40). Plaintiff's filed their reply brief in support of summary judgment on July 8, 2019, thereby missing this deadline. Therefore, Defendant's Motion to Strike Plaintiff's Reply in Support of their Motion for Summary Judgment is GRANTED.

Cross Motions for Summary Judgment were filed by the Plaintiffs Vincent and Diann Miller (ECF #42) and the Defendant USAA Federal Savings Bank (ECF #43). After carefully reviewing the briefs and evidence submitted by the parties, it is clear that there is a genuine issue of material fact that precludes the entry of summary judgment for either party. Specifically, there is an issue of fact regarding when Plaintiff Ms. Diann Miller called USAA FSB to reverse the erroneous payment on the Miller's home equity loan account. This dispute of fact is evident through Mrs. Diann Miller's answer to Defendant's interrogatories, where she states "Plaintiff,

Diann Miller first called USAA on April 20, 2017.” (ECF #43, Ex. 2, PageID #: 402). In contrast, Defendant USAA asserts: “On May 30, 2017, Mrs. Miller called USAA FSB and requested that the April 20th payment be reversed and instead applied to another USAA FSB account.” (ECF #43, PageID #: 295). As both parties have record support for their positions, and the resolution is critical to the claims asserted by parties, summary judgment must be denied. Therefore, the Cross-Motions for Summary Judgment are hereby DENIED. Trial remains scheduled on August 28, 2019, at 8:30 am.

IT IS SO ORDERED.

DATED:

July 15, 2019



DONALD C. NUGENT
United States District Judge